#### Report on the

## **Home Builders Licensure Board**

Montgomery, Alabama



# Department of **Examiners of Public Accounts**

50 North Ripley Street, Room 3201 P.O. Box 302251 Montgomery, Alabama 36130-2251

Ronald L. Jones, Chief Examiner

25-S-02

#### STATE OF ALABAMA

Department of

#### **EXAMINERS OF PUBLIC ACCOUNTS**

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June 9, 2004

Representative Howard Sanderford Chairman, Sunset Committee Alabama State House Montgomery, AL 36130

Dear Mr. Sanderford:

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of the Home Builders Licensure Board in accordance with the *Code of Alabama 1975*, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the Home Builders Licensure Board, in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,

Ronald L. Jones Chief Examiner

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#### **PROFILE**

#### Purpose/Authority

The board was created by Act 92-608, *Acts of Alabama* to regulate the residential home building and remodeling industry for counties with a population of 30,000 or more or that elect to bring the county under the board's regulation. The board licenses qualified residential home builders and manages a consumer recovery fund. The statutory authority for the board is the *Code of Alabama 1975*, Sections 34-14A-1 through 34-14A-17

**Board Characteristics** 

Members	9		
Term	3 year- staggered		
Selection	3 by the Governor 3 by the Lieutenant Governor 3 by the Speaker of the House of Representatives  All appointed from a list of qualified persons selected by the governing body of the Home Builders Association of Alabama.		
Qualifications	<ul> <li>7 residential home builders         <ul> <li>At least 5 years experience</li> <li>Residents of Alabama.</li> </ul> </li> <li>1 building official or inspector         <ul> <li>Currently employed by a city, county, or state governmental entity</li> <ul> <li>Actively engaged in inspecting or regulating residential construction in this state</li> </ul> </ul></li> <li>1 consumer member from the general public         <ul> <li>Not employed by or affiliated with a licensee,</li> <li>No spouse or immediate family member employed by or affiliated with a licensee</li> </ul> </li> </ul>		
Racial Representation	No specific racial representation required by statute One black member		
Consumer Representation	One member required by <i>Code of Alabama 1975</i> , Section 34-14A-3 One consumer member on board		
Geographic Representation	At least one member from each United States Congressional District required by <i>Code of Alabama 1975</i> , Section 34-14A-3		
Other Representation	The membership of the board shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state. ( <i>Code of Alabama 1975</i> , Section 34-14A-3)		
Compensation	Board members receive no compensation for conducting board business, but do receive the same travel allowances as state employees.		

## **Operations:**

Administrator	J. R. "Chip" Carden, Jr, - executive director - appointed by the board to an unclassified position within the state's merit system. ( <i>Code of Alabama 1975</i> , Section 36-26-10(c) (1)).  Salary of \$97,504.32 annually, set by the board and approved by the State Personnel Department.
Location	400 South Union Street, Suite 195 Montgomery, AL 36130-3605
Examinations	Given in Montgomery, Birmingham, Mobile, and Huntsville. Prepared and graded by Psychology Services, Inc.
Licensees	Individual – 3,733 Corporations/Partnerships – 2,889
Renewals	<ul> <li>Licenses expire annually on December 31.</li> <li>All license renewals are required to be reviewed by the board.</li> <li>Board rules require renewal information to be submitted by November 30 of the year the license will expire in order to allow review at the board's December meeting.</li> <li>Licenses not renewed, if renewal applications not received by November 30.</li> <li>No grace period for renewal. Persons with expired licenses have up to three years to reactivate their licenses by submission of required documents and the payment of additional fees.</li> <li>After three years, the licensee must submit a new application and take the exam to become licensed.</li> </ul>
Reciprocity	There are no provisions in the board's enabling statutes that treat an applicant licensed outside Alabama differently from an unlicensed applicant. However, the board has given consideration to out-of-state licensees in its administrative rules by adopting the following language. "Any applicant holding a valid license as a residential home builder issued by a jurisdiction outside the state of Alabama shall be deemed to have satisfied the experience and ability requirements for licensure only upon a determination by the board that:  (a) the licensing requirements of the other jurisdiction are substantially similar to those of Alabama; and  (b) the other jurisdiction exempts Alabama licensees from any examination (testing experience and ability) requirements imposed on residential home builders in that jurisdiction."  As of this report, the board has approved effective reciprocity with Tennessee, South Carolina and Mississippi.

Continuing	Not required by statute			
Education				
Employees	18			
Legal Counsel	2 in-house attorneys			
	1 contract attorney - Randolph P. Reaves, Montgomery			
Subpoena Power	None, except as provided for hearings by Alabama's Administrative			
	Procedure Act in the <i>Code of Alabama 1975</i> , Section 41-22-12(c).			
<b>Internet Presence</b>	http://www.hblb.state.al.us			
	- The website contains the following information:			
	Board members and executive director			
	Consumer information			
	Law			
	Administrative Rules			
	Exemptions (state map indicating exempt counties)			
	Search for licensees			
	Individual licensees			
	Corporation and partnerships			
	Disciplinary actions			
	How to become licensed			
	Board Calendar			
	Applications			
Attended Board	Five board members, one attorney and the executive director have attended			
Member Training	one or more training classes.			

## Financial:

Source of Funds	Licensure fees, administrative fines, recovery fund fees		
State Treasury	Yes		
Unused Funds	Operating fund – excess over \$250,000 at fiscal year end is transferred to the Home Owner's Recovery Fund. <i>Code of Alabama</i> 1975, Section 34-14A-5(d)  Home Owner's Recovery fund – remains in the fund		

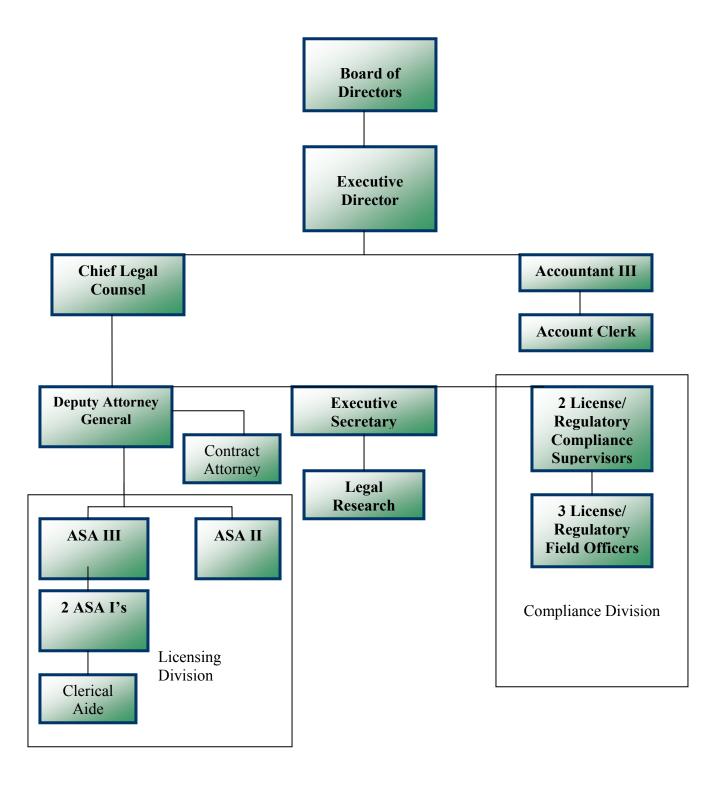
#### **SIGNIFICANT ITEMS**

- 1. Responses to questionnaires sent to the board members indicate that the board desires to amend its law The board plans to submit legislation to address several issues, which include
  - <u>Eliminating county exemptions</u>. Counties with a population of less than 30,000 are not within the jurisdiction of the board. Only by irrevocable election of the county commission can exempted counties be regulated by the board. Only nine counties are currently exempt Lamar, Fayette, Winston, Clay, Perry, Marengo, Wilcox, Washington, and Conecuh.
  - Eliminating the general contractor exemption. A home builder who holds a general contractors' license issued prior to January 1, 1992 and which is currently valid, is exempt from licensure by the Homebuilders Licensure Board. The home building activity of the contractor is also exempt from regulation by the General Contractors Licensing Board. This condition allows the contractor to build homes without coming under the jurisdiction of either board.
  - <u>Authority to address unlicensed activity</u> to discipline contractors practicing without a license.
  - <u>Creating spending authority for the board to purchase its own building</u>. A review of the minutes of board meetings indicates that the board would like to relocate to the downtown area near the riverfront.
- 2. **Responses to complainant questionnaires indicate dissatisfaction with the board's handling of consumer complaints.** Thirty-five of fifty-seven (61%) complainants who responded to a questionnaire expressed dissatisfaction with the board and the board's statutes. Complainants indicate that the law protects the builder and not the consumer.

#### **STATUS OF PRIOR FINDINGS**

All prior findings from prior examinations have been resolved.

## **ORGANIZATION**



#### **PERSONNEL**

The board employs eighteen (18) persons, consisting of one executive director who is an unclassified merit system employee, one contract employee, one full-time temporary employee, and fifteen classified merit system employees. The executive director is appointed by the board. The contract employee is an attorney. The present contract is for the time period of July 15, 2003 through July 15, 2005. The contract amount is not to exceed \$50,000 (\$25,000 each year) in aggregate with a rate of pay set at \$85 an hour plus reimbursable expenses allowed by State law.

#### **Schedule of Employees**

Classification Number of Employees Race Gender **Executive Director** White Male Account Clerk 1 White Female 1 Accountant III Black Male Clerical Aide (full-time temporary) 1 Black Female 2 Administrative Services Assistant I White Female Administrative Services Assistant II White Female 1 Administrative Services Assistant III 1 White Female Attorney III 1 White Female Deputy Attorney General 1 White Female Executive Secretary 1 White Female Legal Research Assistant 1 White Female Licensure/Regulation Compliance Field Officer 3 White Males Licensure/Regulation Compliance Supervisor 2 White Males Contract Attorney White Male 1 Total 18

#### **PERFORMANCE CHARACTERISTICS**

**Number of Licensees per Employee – 368** 

Total Expenditure per Licensee (2003 fiscal Year) - \$ 181.64

Population (Estimate)

#### Number of Persons per Licensee in Alabama and Surrounding States

Number of Licensees

Persons Per Licensee

Alabama	4,500,752	6,622	680
Florida	17,019,068	36,794	463
Georgia	8,684,715	N/A	N/A
Mississippi	2,881,281	4,516	638
Tennessee	5 841 748	20 000	292

#### **Comparison of Types of Licensees with Other States**

			Number Of
State	Method	Category	Licensees
AL	Licenses residential homebuilders by	Corp/Partnership	2,889
	individual or corporate /partnership status	Individual	3,733
FL	Licenses on two levels: Certified	Certified:	
	(statewide) or Registered (local), with 3	General	18,976
	classes of license in each level. All three	Builder	8,618
	levels can build residential structures.	Residential	4,633
	General: unlimited stories. Builder: up to	Registered:	
	three stories. Residential: up to two stories.	General	1,548
		Builder	1,214
		Residential	1,805
GA	Does not license residential home builders	N/A	N/A
MS	Licenses residential home builders and	Home builders	3,802
	remodelers	Remodelers	714
TN	Licenses contractors, all of who can do		20,000
	residential home building. Licensees may		
	add specialty certifications to their licenses.		

#### Notification to Licensees of board Decisions to Amend Administrative Rules

The Home Builders Licensure Board follows the requirements for notification of changes to administrative rules in the Administrative Procedure Act. The board advertises rule changes in the Administrative Monthly and holds a public hearing. No further notice is provided to licensees on a routine basis.

#### **Homeowner's Recovery Fund**

Fiscal Year	2000	2001	2002	2003
Collections from	\$168,540	\$182,850	\$192,630	\$201,630
licensees				

Fiscal Year	2000	2001	2002	2003
Claims Paid	\$ 5,091.71	\$20,000.00	\$ 6,130.03	\$45,882.00
	10,865.00	44,150.00	12,355.84	20,000.00
	25,000.00	26,270.00	13,000.00	10,000.00
	25,000.00	14,303.90	34,000.00	20,000.00
	20,000.00	7,975.73	36,019.01	20,000.00
	9,730.00	16,357.05	25,000.00	25,000.00
	10,000.00	21,250.00	25,000.00	15,294.20
	8,878.00	25,000.00	30,353.87	8,222.45
	50,000.00	25,000.00	20,000.00	959.86
	20,000.00	50,000.00	29,500.00	6,374.95
	30,000.00	13,437.45		4,340.75
		34,000.00		
		25,000.00		
		50,000.00		
Total	\$214,564.71	\$372,744.13	\$231,358.75	\$176,074.21

Transfers to the General Fund or the Homeowner's Recovery Fund from the Home Builders Operating Fund for the past four years have been:

Fiscal Year	2000(1)	2001(1)	2002(1)	2003(1)
General Fund	\$81,033.51	\$97,770.52	\$92,765.38	
Recovery Fund				\$142,742.93

(1) The *Code of Alabama 1975*, Section 34-14A-5 provides that "(d) Any funds remaining in the State Treasury to the credit of the Home Builders Licensure Board Fund at the end of each year shall be paid into the General Fund of the state on or before January 15, in each succeeding year, except that should the board exercise its authority to establish the Homeowner's Recovery Fund as provided in this chapter, any funds remaining in the State Treasury to the credit of the Home Builders Licensure Board Fund shall be paid into the Homeowner's Recovery Fund of the board."

#### **Complaint Resolution**

Board Rule 465-X-5-.03 provides the procedures for documentation, receipt, and investigation of complaints relating to board licensees and illegal practices. During the past four years the board responded to 747 consumer complaints. Thirty-five complaints were filed by board members. Most consumer complaints were closed due to no probable cause (43%). When combined with other consumer complaints, which are outside the jurisdiction of the board, the percentage of

unaddressed consumer complaints rises to 68%. Only twenty-four percent (24%) of the consumer complaints were found to have probable cause while 68% of the board complaints were found to have probable cause. Less than 1% of the board complaints had no probable cause.

#### Average number of days from receipt to resolution

	2000	2001	2002	2003
<b>Consumer Complaint</b>	136	127	105	82
<b>Board Complaint</b>	78	88	170	132

#### **Disposition of Consumer Complaints**

Resolution		01	02	03	Total by Category
Closed, no probable cause	55	93	90	86	324
Probable cause-disciplinary action	22	61	41	58	182
Unlicensed builder-remanded to other authorities	11	23	31	30	95
Outside the jurisdiction of the Board	16	20	28	27	91
Held in abeyance	1	0	1	0	2
Complaint withdrawn by homeowner	4	8	7	11	30
Still open	0	0	0	23	23
Total Complaints Received	109	205	198	235	747

#### **Disposition of Board Complaints**

Resolution	2000	01	02	03	Total by Category
Closed, no probable cause	2	0	0	0	2
Probable cause	7	6	7	4	24
No action taken	2	0	0	2	4
Opened in error	2	0	0	2	4
Held in abeyance	0	1	0	0	1
Total Complaints Received	13	7	7	8	35

#### **Complaint Process**

Complaints originate from either consumers or from the board, based on information received. Complaints must be in writing and sworn to by the person making charges as per *Code of Alabama*, 1975, Section 34-14A-8. Therefore, anonymous complaints may not be processed. Complaints are processed through four stages as shown on the following page:

Initial Documentation	<ul> <li>Upon receipt of the written complaint, both the complainant and the licensee are notified and given 20 days to resolve all differences without board intervention. If differences are not resolved, the complaint is assigned to an investigator based on the location of the residence in question.</li> </ul>
Discovery	<ul> <li>The investigator interviews all parties involved in the complaint, reviews records and inspects the residence in question.</li> <li>At the conclusion of the investigation a report is written and submitted to the Investigation Committee, consisting of the executive director, a board member and the board's attorney,</li> </ul>
Determination of Probable Cause	<ul> <li>The investigation committee reviews all investigation reports and determines if probable cause exists for disciplinary action.</li> <li>To meet probable cause requirements, the licensee must have committed fraud or deceit in obtaining a license or perpetrated gross negligence, incompetence, or misconduct in the practice of residential home building.</li> <li>NOTE: The board member participating on the investigation committee does not participate in any disciplinary proceeding resulting from the investigation.</li> </ul>
Resolution	<ul> <li>If no probable cause exists, the complaint is closed and all parties are notified. In addition, depending on the nature of the problem, information may be forwarded to other appropriate government authorities.</li> <li>If probable cause exists, the board initiates either informal settlement proceedings, or formal hearing proceedings. The disciplinary options by law for the board in formal hearing proceedings are suspension and revocation of license and administrative fines, not to exceed \$2,000 per violation. (Section 34-14A-8(k) The board may also enter into settlement agreements, as allowed by the Administrative Procedure Act for contested cases. The board is also considering, in lieu of suspension, a training class for disciplined licensees.</li> </ul>

If at any time in the process, the licensee and complainant resolve all differences and/or restitution is made, the complaint is closed. If no probable cause is determined and the case is closed, the complainant, upon submission of additional evidence, may request that the case be reopened, and another review made. The complainant is notified by mail of the complaint status.

The board records and tracks complaints in an electronic database. On a biweekly basis, all open complaints are reviewed by the investigative staff, attorneys and executive director in a staff meeting.

### **FINANCIAL**

#### Fee Schedule

Fees are set by the board as authorized by Section 34-14A-5. A separate administrative fine is authorized by Section 34-14A-8(k).

Description	Amount	Authority
Annual License Fee	175.00	34-14A-5
Annual Homeowner's Recovery Fund Fee (active licensees only)	30.00	34-14A-15
not to exceed \$60		
Application Processing Fee (non-refundable):		
New Applications	25.00	34-14A-5
Applicants Holding Expired Licenses Less Than 3 Years Old	295.00	34-14A-5
Inactive Fee	100.00	34-14A-5
Request for Examination Records Fee	15.00	34-14A-7(a)(6)
Late Fee	25.00	34-14A-5
Fines		
Administrative fine per each violation not to exceed \$2,000 for	\$2,000	34-14A-8(k)
each violation		

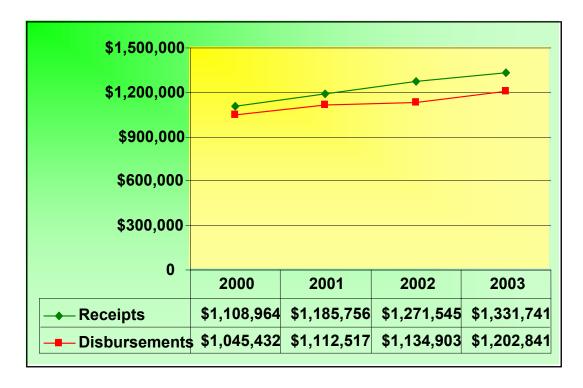
## <u>Schedule of Cash Receipts, Disbursements, and Balances – Operating Fund</u> Home Builders Fund 719

## For the Period October 1, 1999 through September 30, 2003

	2003	2002	2001	2000
Receipts				
Home Builders License	\$ 1,197,025.00	\$ 1,138,685.00	\$ 1,078,825.00	\$ 990,250.00
Applications	8,900.00	30,848.00	35,027.00	30,700.00
Miscellaneous Fees Not Otherwise	- 3-	,	,.	,
Classified	1,400.00	940.00	415.90	1,834.44
Fees and Fines Not Otherwise	,			,
Classified	55,295.00	44,785.00	39,290.00	39,680.00
Professional Occupation Penalty	49,000.00	54,400.00	32,050.00	46,500.00
Prior Year Refund	14.66	(350.00)	127.48	-
Salvage Equipment or Other Property	106.61	2,237.50	20.77	
Total	1,331,741.27	1,271,545.50	1,185,756.15	1,108,964.44
Total	1,551,711.27	1,271,313.30	1,105,750.15	1,100,701.11
<u>Disbursements</u>				
Personnel	672,003.88	615,290.99	580,597.06	539,244.33
Employee Benefits	170,107.23	149,149.31	137,087.15	121,684.80
Travel in State	41,076.22	39,183.08	37,187.70	29,776.28
Travel out of State	1,760.00	3,472.45	4,264.37	4,958.32
Repairs and Maintenance	506.55	289.78	1,292.62	2,807.99
Rentals and Leases	73,753.00	63,068.06	67,596.87	71,122.28
Utilities and Communication	49,480.84	44,806.12	43,965.17	52,641.53
Professional Services	62,764.55	96,010.37	92,108.24	69,222.79
Supplies and Operating Expenses	57,672.19	66,796.10	73,720.17	68,236.44
Transportation Equipment Operations	15,334.94	15,299.36	16,213.37	15,806.43
Grants and Awards	-	-	25.00	-
Transportation	52,354.00	16,946.00	33,892.00	61,707.00
Non-transportation Equipment				
Purchases	6,027.94	24,592.36	24,567.75	8,224.31
Transfers to General Fund				
(Homeowners' Recover Fund 2003)	142,742.93	92,765.38	97,770.52	81,033.51
Total	1,345,584.27	1,227,669.36	1,210,287.99	1,126,466.01
F (D. C. i				
Excess (Deficiency) of Receipts over	(12.042.00)	42.076.14	(24.521.04)	(17.501.57)
Disbursements	(13,843.00)	43,876.14	(24,531.84)	(17,501.57)
Cash Balance at Beginning of Year	436,461.12	392,584.98	417,116.82	434,618.39
Cash Balance at End of Year	422,618.12	436,461.12	392,584.98	417,116.82
Reserved for Unpaid Obligations	(122,185.01)	(86,832.05)	(91,481.00)	(111,507.75)
Unreserved Cash Balance at end of Year	\$ 300,433.11	\$ 349,629.07	\$ 301,103.98	\$ 305,609.07

Operating Receipts Vs Operating Disbursements - Operating Fund

Home Builders Licensure Board Fund 719 For the Period October 1, 1999 through September 30, 2003



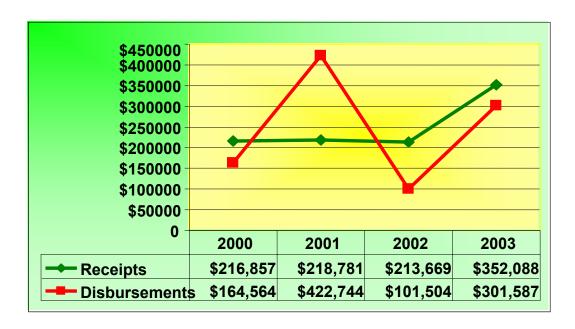
## Schedule of Cash Receipts, Disbursements, and Balances Home Owner's Recovery Fund

#### Home Builders Fund 720 For the Period October 1, 1999 through September 30, 2003

	2003	2002	2001	2000
Receipts				
Home Builders License Prior Year Refunds/Transfers	\$ 201,630.00	192,630.00	\$ 182,850.00	\$ 168,540.00
from Operating Fund 0719	142,742.93	10,440.00	3,500.00	7,000.00
Interest Income	7,715.68	10,599.88	32,431.40	41,317.21
Total	352,088.61	213,669.88	218,781.40	216,857.21
<u>Disbursements</u>				
Grants and Benefits	301,587.33	101,504.88	422,744.13	164,564.71
Excess (Deficiency) of Receipts over Disbursements	50,501.28	112,165.00	(203,962.73)	52,292.50
Cash Balance at Beginning of Year	589,056.69	476,891.69	680,854.42	628,561.92
Cash Balance at End of Year	639,557.97	589,056.69	476,891.69	680,854.42
Reserved for Unpaid Obligations	(242,320.00)	(164,689.00)	(50,000.00)	(164,500.00)
Unreserved Cash Balance at end of Year	\$ 397,237.97	\$ 424,367.69	\$ 426,891.69	\$ 516,354.42

#### Receipts vs. Disbursements - Home Owner's Recovery Fund

Home Builders Fund 720 For the Period October 1, 1999 through September 30, 2003



#### **QUESTIONNAIRES**

#### **Board Member Questionnaires**

Questionnaires were mailed to all nine board members. Seven responded.

- 1. What are the most significant issues currently facing the Home Builders Licensure Board and how is the Home Builders Licensure Board addressing these issues?
  - 1. A large number of new counties have elected to come under the license law, which means all of the builders are accepted under the grandfather clause. Unfortunately, many are under funded as builders and in some counties there are no inspections or building codes.
  - 2. Space and staff. We have started processing paperwork for additional staff. We would like our own property to house the licensure board.
  - 3. A. Eliminate county exemption;
    - B. obtain new stand alone facility;
    - C. eliminate general contractor exemption;
    - D. increase staff to handle workload;
    - E. give board defined authority to deal with unlicensed builders and consultants.
  - 4. 1) to achieve 100% license requirement (State-County-wide) elimination of county exemption;
    - 2) defined authority in dealing with unlicensed builders;
    - 3) additional staffing.
  - 5. The most significant issue currently facing the Home Builders Licensure Board is the need to eliminate the county exemption. The staff is [illegible] with county officials to correct this. The lack of this denies equal protection.
  - 6. Present office facilities are inadequate for near future; most cost effective way to remedy is to acquire our own office building.
  - 7. 1) Remove counties ability to remain exempt from the law.
    - 2) Need at least one more compliance officer (Jefferson County area)
- 2. What changes to the Home Builders Licensure Board's laws are needed?
  - 1. The law needs to include a building standard for the entire state.
  - 2. Delete county exemptions and general contractor exemptions and grandfather those who desire to become licensed. Create a spending authority for the board to purchase its own building.
  - 3. A. create a spending authority for the board to purchase its own building;
    - B. delete grandfathering contractors and county exemptions;
    - C. add language to enable the board to take more decisive action against unlicensed builders:
    - D. delete general contractors exemption and grandfather those who desire to become licensed.
  - 4. 1) elimination of county exemption (100% requirement);
    - 2) authority in dealing with unlicensed builders;
    - 3) spending authority for licensure board housing.

17

- 5. The Board needs stronger language to take more decisive and stronger action against unlicensed builders. These people are a threat and take advantage of older people, widows, and widowers.
- 6. Create a spending authority for the board to purchase its own building.
- 7. See #1 above

3.	Is the Home Bu	ilders Licensure Boa	rd adequately funded?	
	<u>7</u> Yes	No	Unknown	No Opinion
	<ol> <li>It is for</li> <li>No com</li> </ol>	ment ment ment ment ment	nims could change that.	
4.	Is the Home Bu	ilders Licensure Boa	rd adequately staffed?	
	Yes	<u>7</u> No	Unknown	No Opinion
	<ol> <li>No com</li> <li>No com</li> <li>Addition</li> <li>More state</li> <li>Need ne</li> </ol>	ment ment nal staff and complia aff is needed to adeque w compliance office	-	workload to the needs of the general public

- 5. What is the purpose of your fiscal year end balance of unobligated funds?
  - 1. To hold there, sooner or later, we will need them-also, we need larger quarters, which add to the cost. Future: a) all builders to be required to carry "workman comp" even if they sub all the work. This would be to cover subs that do not carry "workman comp". b) all builders to carry liability with "completed producer" coverage. c) down the road-show adequate funding similar to commercial contractors.
  - 2. Funds are deposited in Homeowners' Recovery Fund.
  - 3. Deposited in the Home owner's recovery fund.
  - 4. Home Owners' Recovery Fund
  - 5. They go to the Home Owners' Recovery Fund. This fund has an increasing demand to help home owners who have been harmed by "unethical builders".
  - 6. Goes into recovery fund
  - 7. These left over funds are made available to our consumers as an addition to our recovery fund

### Licensee Questionnaires

Questionnaires were mailed to one hundred licensees. Forty-six responded.

~~	iostioiiiaii os v	ore manea to o	iio iiaiiai ca iio	CHBCCB.	Torty shi responded.
1.	-	regulation of y protect public w	-	by the l	Home Builders Licensure Board is
	<u>38</u> Yes	<u>5</u> No	2 Unknown	<u>1</u> No	Opinion
					rotect public welfare. lone not starting at \$10,000.
2.	•	any of the Hon restriction on th			Board's laws, rules, and policies are an ession?
	<u>10</u> Yes	<u>30</u> No	<u>2</u> Unl	known	<u>4</u> No Opinion
	-	0: I conduct my		-	ional manner. I feel the board probably
3.	•	any of the Hon actice of your p		censure	Board's requirements are irrelevant to the
	<u>14</u> Yes	<u>30</u> No	<u>1</u> Unknown	<u>1</u> No	Opinion
	Respondent 1	: Unlicensed bu 0: The credit re n would be bett	port that I am		d the law. I to pay for is totally unnecessary-a bond
4.					s Licensure Board of changes to and positions, policies, rules and laws?
	<u>30</u> Yes	<u>10</u> No	<u>3</u> Unl	known	3_No Opinion
	Respondent 1	1: Some times			
5.	Has the Home manner?	e Builders Lice	nsure Board po	erforme	d your licensing and renewal in a timely
	<u>39</u> Yes	<u>5</u> No	2 No Opinio	n	
6.	What do you	think is the mo	st significant is	ssue(s) o	currently facing your profession in

Alabama and what is the Home Builders Licensure Board doing to address the issue(s)?

- 1. a) Letting insurance companies make the building codes. This continues to make cost of houses go up and put them out of reach for poorer people. b.) I think that they are doing nothing to help.
- 2. Regulating home builders licensing.
- 3. Workman's compensation and health insurance costs are terrible. Availability of skilled labor is short I don't know of anything the Board does to help these problems.
- 4. No comment
- 5. Non-licensed builders
- 6. You keep integrity in home building
- 7. No comment
- 8. Home Builders Licensure Board is doing nothing but creating a job for a few people at us builders' expense.
- 9. No comment
- 10. No significant issues other than lack of local building officials.
- 11. Illegal workers in state not having to have license to do work under \$10,000. More work is being done wrong than to \$100,000. Nothing.
- 12. No comment
- 13. a) insurance-general liability/workman's comp. b) nothing
- 14. Investigating standards of practice
- 15. Regulating all counties. The board seems to be working with county officials to get this into place.
- 16. No opinion
- 17. (I) the now issuance of incidental take permits in Ft. Morgan from Fish and Wildlife. (R) I don't know what steps have been taken in order to help the situation.
- 18. Ensuring and verifying the work quality of licensed builders
- 19. Lack of available liability insurance. By eliminating incompetent builders and professionalizing the industry hopefully more insurance companies will get back in the market.
- 20. The problem with obtaining general liability insurance and workers compensation insurance sky rocketing premiums.
- 21. No comment
- 22. No issues at this time
- 23. No comment
- 24. No comment
- 25. Having all builders be licensed and having all homes built by licensed contractors.
- 26. Home owners build their own home without licensure. A builder starts behind their homes to keep their licensure. These home owners house are falling apart. Home owners are (allowed to) build to sell with no rules.
- 27. 1) Code interpretations from city to city work in progress. 2) although state licensed, city to city license requirements none 3) Very important-cost of liability insurance none (major issue)
- 28. The biggest problem facing builders is unlicensed people doing business in rural areas where there's no form of inspection. The only way to fix this problem is to have inspectors in every county in Alabama.
- 29. No comment
- 30. No comment

31. Lack of liability in	surance - don't believ	e this is the resp	onsibility of the	e Home Builder
Licensure Board.				

- 32. (Unlicensed builders) Need more enforcement and more strict laws.
- 33. No comment
- 34. No opinion
- 35. A) The unreasonable cost increase to construct a house being impaired by these new international building codes. Our homes have always been built with the safety of the future homeowner as the top priority. B) I'm not sure.
- 36. Excessive code restrictions in Mobile County none that I am aware of (Licensure Build addressing)
- 37. The cost of insurances. To my knowledge, nothing.
- 38. N/A
- 39. No comment
- 40. The board not taking any responsibility for the "mold" and or "stucco" problem.
- 41. No comment
- 42. Not having a license, doing inadequate work, giving our profession a bad name.
- 43. No comment
- 44. No comment
- 45. I think all counties should be required to have building inspections.
- 46. The board seems to be detached from the very people that pay their positions.
- 7. Do you think the Home Builders Licensure Board and its staff are satisfactorily performing their duties?
   28 Yes
   4 No
   10 Unknown
   4 No Opinion
   Respondent 11: I only hear about them in your newsletter not from people that have bad work done under \$10,000. There are a lot of them but law does not apply to them. Respondent 46: Very slow in renewals of yearly licenses.

8. Has any member of the Home Builders Licensure Board or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a Home Builders Licensure Board service for you?
Yes 45 No Unknown 1 No Opinion
Respondent 3: I feel that the need to obtain multiple licenses is unfair and restrictive. I must

Respondent 3: I feel that the need to obtain multiple licenses is unfair and restrictive. I must maintain a State contractor's license <u>and</u> a home builder's license. One should be sufficient. On top of that I must obtain a city license for almost every municipality that I do business in. Respondent 11: All the people that I have met have been good but the fees are too high for the ones that are small.

Respondent 26: I was president of when this written (law) was passed. I spent a week in Montgomery lobbying and feeding House members to get this passed.

Respondent 37: #1 Each city has inspection services. #2 The licensure board has done nothing but collect renewal fees. #3 The licensure board does nothing to help builders or protect the public. That's what our court system does.

## **Complainants Questionnaires**

<u>37</u> Yes

Qu	estionnaires were mailed to one hundred complainants. Fifty-seven responded.
1.	Was your complaint filed with the Home Builders Licensure Board by:
	50 Mail 3 Phone 1 Fax 1 Other 2 Unknown
2.	Was receipt of your complaint promptly acknowledged?
	$\underline{52}$ Yes $\underline{4}$ No $\underline{1}$ Unknown
	Respondent 41: The man didn't have a license to build houses and didn't belong to the Home Builders Association.
	If yes, approximately how long after you filed your complaint were you contacted by the Home Builders Licensure Board?
	8 Immediately 20 Within 10 days 10 Within 20 days
	10 Within 30 days 5 More than 30 days 1 Did not respond
	3 Unknown
	Respondent 29: When they got ready. Respondent 34: I filed on 9/13/01. Sent completed form on 11/13/01. Compliance officer visited us 01/07/02. Can't find records on when we were contacted by phone. Respondent 56: The investigator appeared to be overwhelmed with his work.
3.	Was the employee who responded to your complaint knowledgeable and courteous?
	<u>8</u> Knowledgeable <u>19</u> Courteous <u>20</u> Both <u>7</u> Neither <u>3</u> Unknown
	Respondent 8: Received a letter – no one contacted me Respondent 50: Mr. said that a recovery fund was available for up to \$50,000 per incident – this was not true.
4.	Did the Home Builders Licensure Board communicate the results of investigating your complaint to you?

<u>5</u> Unknown

<u>15</u> No

Respondent 1: They did not investigate.

Respondent 14: Because they didn't investigate anything!!!

Respondent 20: Not completely, only about 2 or 3 items was reported. There were several things that was not done to Code. House was not built according to contract and

specifications. Contractors refused to go by the Codes and specifications and contract.

Respondent 21: They did not explain their decision.

Respondent 29: Told me the builder could do anything they wanted.

Respondent 32: On going

Respondent 34: Received letter from HBLB dated 3/29/02 with results as follows: "The Investigative Committee has determined that no probable cause exists to proceed with formal disciplinary action proceedings regarding this matter...file has been closed."

Respondent 41: They just said they couldn't help me.

Respondent 45: I continued to call and was told I had no case.

Respondent 50: Not until the contractor's license had expired. The results were mailed on July 9, 2003.

Respondent 56: No results to date (2/24/04)

5. Do you think the Home Builders Licensure Board did everything it could to resolve your complaint?

<u>15</u> Yes <u>33</u> No <u>9</u> Unknown

Respondent 20: I have a copy of the contract, blue prints, and specifications, which was furnished to the contractors. It stated that the house would be built according to prints and specifications, also that a certain company would do the heat and air, that person was not used and I didn't get the unit that was suppose to went in my home (the contractor put a much cheaper unit in) and it does not serve my purpose. The house has several defects and there was several code violations. The people from Montgomery took about 15-20 minutes to look at my house. They didn't take time to look at the prints and specs. Also, the pictures I taken of the house when it was being built. A person from Montgomery told me that he would be the attorney representing me in the case. I told him that I wanted to be there during the trial. He notified shortly after I talked to him that he has settled the case. I don't feel like he should have that authority to do that without my permission. The case is still not settled. I hired a home builder inspector licensed. He took the print specs and contract and inspected the home completely. He has made a written report to my attorney and we have a suit filed in court. I feel like the State should get behind this case and see to it that we are awarded what we deserve from our loses and the amount should be greater than what we have now on file due to the increase in materials and the mental anguish we have suffered. If you would like to contact my attorney,

Respondent 28: I do not know, with the reason being is that, I received no payment at all on this claim even though it should have been paid but apparently this builder had previous claims against him and there was therefore no money left to be paid to me.

Respondent 29: They told me the builder had rights and was protected and I had <u>none</u>.

Respondent 32: Still working on it

Respondent 45: I was least important. Someone should be accountable for messing over people.

6. Were you satisfied with your dealings with the Home Builders Licensure Board?

<u>18</u> Yes <u>35</u> No <u>4</u> Unknown

#### Comments:

- 1. It was a matter of ethics as well as incompetence. He did not build our home, only a dock and wall, so I understand the Board's not investigating, but it seems to me that a builder should be accountable for all his work. I think there were other complaints, however, and someone has instituted a suit against this particular builder. They really have a case!
- 2. No comment
- 3. No comment
- 4. No comment
- 5. No comment
- 6. I am attaching a copy of my communication with Licensure Bd. As you can see they said they couldn't help. It might save time for both consumers and state employees if complaint forms give timeframes on the forms to indicate that 1994 starts their enforcement procedures. Thank you.
- 7. No comment
- 8. No comment
- 9. No comment
- 10. Fox guarding hen house.
- 11. No comment
- 12. was sent to my home
- 13. No comment
- 14. The licensure board is a sorry excuse for the protection of consumer's rights. I heard more excuses of why they couldn't assist me than how they could help. With the investigation that I completed on the licensure laws it's unacceptable for the State of Alabama to still be operating in the "Stone Age". No wonder that Alabama becomes the butt of everybody's jokes throughout the country. Alabama doesn't take any proactive measures to protect the rights of the consumers and allows the "contractors" to conduct themselves in an unprofessional (manner) and conduct fraudulent activities. The contractor "

  "has stolen money and left unfinished houses at least four times that I'm aware of and the State still allows him to conduct business in this manner. Do you
- 15. Please be advised that the unlicensed person threatened to burn down and deny any knowledge of anything about the \$22,000 and receipt of any check for him or

condone this type of fraudulent behavior on a regular basis? Sincerely,

- 16. No comment.
- 17. No comment.
- 18. No comment

- 19. No comment
- 20. There were two men that come to my house. They were here about 15 minutes. The house and plans was not inspected like I asked for. This case is going to court, soon, you should take a part.
- 21. If you have questions, please feel free to contact me.
- 22. No comment
- 23. No comment
- 24. No comment
- 25. No comment
- 26. No comment
- 27. No comment
- 28. No comment
- 29. I am in receipt of your letter and survey dated January 12, 2004. I am compelled to write you a letter because this questionnaire cannot express the frustration I feel because of the lack of concern and support that the Alabama State Home Builders Licensure Board showed me. It was quite evident to me that the consumer has no rights and the builder has all of the rights. I continue to have problems with my house and property and I have no recourse. I can try to sell my house, but if I have to reveal to a potential buyer the problems I have had, I have little chance of selling. I have, within the last month, had a hole dug in my front yard that was large enough that a Volkswagen beetle could have fit in it. The reason, there is a house under construction across the street from me and the contractor had to tie into the utilities in my yard for this new house. The hole was so large because they could not find what they were looking for so they kept digging. I was told that if they had to dig all the way up to my front door, they could because it was public utilities. Again, no one notified me that they were going to do this. I came home and there was the hole. And when do you think this was going on?-less than ten days before Christmas. The hole was filled in Christmas Eve and my yard is not level as it was before the hole was dug. More work for me to do because the builder has all of the rights. I have none. Again, absolutely no concern for the consumer. I really do no know why I am even wasting your time and mine by writing this letter. I guess I am still hoping that maybe one day someone will tell the "big guy" that the "little guy" does have some rights. I feel that my rights as a property owner have been violated-same as rape!
- 30. I think the board should have looked into this matter more in depth because my floor is still uneven and my downstairs bathroom is still mismatched. I picked out all my colors and flooring and the builder put in what he wanted me to have. I think the board only helps the builder. How would you feel if you pay for something and that person gives you what they want you to have? It's not fair.
- 31. No comment.
- 32. No comment
- 33. No comment
- 34. I consider these dealings to have been a waste of taxpayers money!
- 35. No comment
- 36. They are great! The entire team!

- 37. No comment
- 38. I, \_\_\_\_\_\_\_, residing at \_\_\_\_\_\_\_ still have not had the problem resolved with the heating and air conditioning unit. Four different people have responded to check the unit and not 1 of them found anything wrong, so they said. The names of the men are \_\_\_\_\_\_\_, Investigator, \_\_\_\_\_\_\_, and a \_\_\_\_\_\_. The house is freezing now in the winter and in the summer it was very hot. We have been very unsuccessful trying to resolve this problem with the state. So, we called Sears to come check it and the service man that came out told us there is nothing that can be done because, THE ENTIRE UNIT IS NOT RIGHT FOR THE HOUSE. THE ENTIRE UNIT NEEDS TO BE CHANGED. We have tried and tried and the state is not helping. Please contact me about sending someone out to change the unit.
- 39. Our case was also in civil court. Our builder wanted us to drop the complaint. We did and we felt that the HBA should have still handled the complaints simply as a case of homebuilder negligence. Other boards still deal with their members when the person filing the complaint drops out of it is a case that could affect others that might use them. We did not hear what happened.
- 40. No comment
- 41. No comment
- 42. No comment
- 43. No comment
- 44. No comment
- 45. I think for individuals in this State, some measure should be instituted, where the average Alabamian could be served judiciously.
- 46. No comment
- 47. No comment
- 48. No comment
- 49. No comment
- 50. On February 19, 2003, your representative, Ms. \_\_\_\_\_, said that there were no funds available for me from the recovery fund.
- 51. If the contractor was not licensed, then why is he not penalized for practicing without a license? I'm a nurse and if I don't get a license renewal, I cannot work. I'm penalized if my driver's license is not renewed or if I'm caught without them. This man took over \$26,000 from me and walked away. Nothing was done, no arrest, no conviction and he lied saying he was licensed.
- 52. Feb. 2004 Dear As per our phone conversation, I am including copies of all my correspondence with the licensure board. The only thing I did not include was a copy of my contract which I will do if you would find it useful. The investigator they sent pointed out things to us and seemed genuinely appalled at the situation. He did take pictures of everything and my husband and I really did believe that the board was going to put an end to all our troubles. We were shocked when they said they found no probable cause. I sent forth a follow up letter asking them to reopen the file. Again they said they found no probable cause. No explanation of why the problems exist with our home were given. It is truly my estimation that the Licensure Board exists to protect the builder and not

- the consumer. My home is a prime example of that and the attached paperwork will prove it. Thank you for your help. Sincerely
- 53. I had telephone conversation with Mr. couple times, I request he come out. He said he could only come out if Home Builders told him to.
- 54. No comment
- 55. No comment
- refused to work to repair the damages to our home and proceeded to tell us to <u>sue</u> them, it was our problem and we could never <u>touch them</u>. As this has played out over the last 2-3 years, apparently the Home Builders Licensure Board is of <u>no concern</u> to home builders. This is extremely unfortunate. The complaint procedure should be provided to all home buyers at the time of closing. Builders should be held accountable for the work they do and are paid well for.
- 57. I was very unhappy with the Homebuilders' Licensure Board because during your investigation, you found several items on my home not built to code. Your investigator stated that not only was my front porch not built to code but it was also dangerous and we should avoid using it. My builder was incompetent and deceitful. Because my lawyer suggested it would benefit us to settle our civil case, the Homebuilders' Licensure Board also dropped its case against my builder. This was even after its investigation determined my builder to participate in items against the board's regulations. No one required the builder to fix his errors. Even though my home was classified as unsafe. I have a one-year old and a three-year old who are still being forced to use these unsafe steps. I feel your board did nothing to help me with this matter. And you continue to issue licenses to unqualified builders. Thank you.

#### **APPENDIX 1 - EXEMPT AND NON-EXEMPT COUNTIES**



# **APPENDIX 2 - STATUTORY AUTHORITY**

## CHAPTER 14A. HOME BUILDING AND HOME IMPROVEMENT INDUSTRIES.

## § 34-14A-1. Legislative intent. [AL ST SEC 34-14A-1]

Current through End of 2003 Organizational Session

In the interest of the public health, safety, welfare, and consumer protection and to regulate the home building and private dwelling construction industry, the purpose of this chapter, and the intent of the Legislature in passing it, is to provide for the licensure of those persons who engage in home building and private dwelling construction, including remodeling, and to provide home building standards in the State of Alabama. The Legislature recognizes that the home building and home improvement construction industries are significant industries. Home builders may pose significant harm to the public when unqualified, incompetent, or dishonest home building contractors and remodelers provide inadequate, unsafe or inferior building services. The Legislature finds it necessary to regulate the residential home building and remodeling construction industries.

(Acts 1992, No. 92-608, p. 1282, § 1.)

# § 34-14A-2. Definitions. [AL ST SEC 34-14A-2]

Current through End of 2003 Organizational Session

As used in this chapter, the following terms shall have the following meanings, respectively, unless the context clearly indicates otherwise:

- (1) Board. The Home Builders Licensure Board.
- (2) Contracting. Except as exempted herein, engaging in residential and private residence construction business as a contractor.
- (3) Home Builders Licensure Board. The board created herein to regulate the home building and residential construction industry.
- (4) Homeowner. One who owns and resides or intends to reside in a structure constructed or remodeled by a licensee of the board.
- (5) Inactive license. A license issued at the request of a licensee, or a building official or a building inspector, which is renewable, but which is not currently valid.
- (6) License. A new license or a renewal license issued by the board pursuant to this chapter.
  - (7) Licensee. A holder of a certificate issued pursuant to this chapter.
- (8) Person. Any natural person, limited or general partnership, corporation, association, limited liability company, or other legal entity, or any combination thereof.
- (9) Residence. A single unit providing complete independent residential living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.
- (10) Residential home builder. One who constructs a residence or structure for sale or who, for a fixed price, commission, fee, or wage, undertakes or offers to undertake the construction or superintending of the construction, of any residence or structure which is not over three floors in height and which does not have more than four units in an apartment complex, or the repair, improvement, or reimprovement thereof, to be used by another as a residence when the cost of the undertaking exceeds ten thousand dollars (\$10,000). Nothing herein shall prevent any person from performing these acts on his or her own residence or on his or her other real estate holdings. Anyone who engages or offers to engage in such

undertaking in this state shall be deemed to have engaged in the business of residential home building.

(11) Structure. A residence, including a site-built home, a condominium, a duplex or multi-unit residential building consisting of not more than four residential units. (Acts 1992, No. 92-608, p. 1282, § 2; Acts 1997, No. 97-250, p. 452, § 3; Act 2002-72, p. 163, § 1.)

# § 34-14A-3. Home Builders Licensure Board. [AL ST SEC 34-14A-3]

Current through End of 2003 Organizational Session

There is established the Home Builders Licensure Board. The board shall have nine members, at least one from each United States Congressional District in this state, who shall be appointed as follows: three by the Governor, three by the Lieutenant Governor, and three by the Speaker of the House of Representatives, from a list of three qualified individuals for each position, provided by the governing body of the Home Builders Association of Alabama. Seven of the members shall be residential home builders, as defined in this chapter, with at least five years' experience as a residential home builder and each shall be a bona fide resident of the State of Alabama. One member shall be a building official or inspector currently employed by a city, county, or state governmental entity and actively engaged in inspecting or regulating residential construction in this state. One shall be a consumer member of the general public not employed by or affiliated with a licensee hereunder, and who has no spouse or immediate family member employed by or affiliated with a licensee hereunder. The membership of the board shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state. Of the initial members of this board, the appointing authorities shall designate that each appointee shall serve for an initial term of one, two, or three years, their terms of office expiring on December 31, of said years. Subsequent terms shall be for a period of three years. This appointing authority shall make an appointment to fill a vacancy for the remainder of any unexpired term from a list of three qualified persons supplied by the governing body of the Home Builders Association of Alabama. Each board member shall hold over after the expiration of his term until his or her successor shall be duly appointed and qualified.

(Acts 1992, No. 92-608, p. 1282, § 3; Acts 1997, No. 97-250, p. 457, § 3.)

§ 34-14A-4. Meetings of board; quorum; records. [AL ST SEC 34-14A-4]

Current through End of 2003 Organizational Session

The board shall meet at such other times as the chair may designate; provided, however, that the board shall meet within thirty days after appointment for the purpose of organizing and transacting such business as may properly come before it. Four members shall constitute a quorum at all meetings. The secretary of the board shall keep such records of each meeting as shall be required by the board.

(Acts 1992, No. 92-608, p. 1282, § 4.)

§ 34-14A-5. Licenses required; exceptions; fees. [AL ST SEC 34-14A-5]

Current through End of 2003 Organizational Session

(a) All residential home builders shall be required to be licensed by the Home Builders Licensure Board annually except that any person engaged in residential home building on or before January 1, 1992, shall be duly licensed by the board, without examination, after paying the required annual fee and submitting to the board, within a period of twelve months after the board is established, one of the following:

- (1) An affidavit showing that the residential home builder has constructed a minimum of one residence as defined herein within the year prior to January 1, 1992, or five residences within the previous five years.
  - (2) Satisfies the board of his or her building qualifications and experience.
- (3) Is currently licensed as a residential home builder by a jurisdiction in this state which requires an examination for licensure.
- (4) Is a currently licensed residential remodeler by a jurisdiction in this state, who by his or her personal affidavit can establish that his or her business did a gross remodeling dollar volume in the previous calendar year of two hundred fifty thousand dollars (\$250,000) or more.
- (b) Any person engaged in residential home building in a county in which the county commission has irrevocably elected, pursuant to Section 34-14A-6, to have the county covered by this chapter, shall be duly licensed by the board, without a written examination testing his or her experience and ability, by meeting the licensing requirements set out in Section 34-14A-7, by paying the required annual fee, and by submitting to the board, within one year from the date the county commission of the electing county notifies the board of the action of the county commission making applicable this chapter, any one of the following:
  - (1) An affidavit showing that the residential home builder has constructed a minimum of one residence as defined herein within the year prior to the date the county commission notifies the board of its irrevocable election to make this chapter applicable to the electing county or at least five residences within the previous five years.
    - (2) Satisfies the board of his or her building qualifications and experience.
  - (3) Is currently licensed as a residential home builder by a jurisdiction in this state which requires an examination for licensure.
  - (4) Is currently licensed as a residential remodeler by a jurisdiction in this state, who by his or her personal affidavit can establish that his or her business did a gross remodeling dollar volume of two hundred fifty thousand dollars (\$250,000) or more in the year prior to the date the county commission notified the board of its irrevocable election to make this chapter applicable to the electing county.
- (c) Except as provided in this chapter, all licenses shall be issued or renewed upon the payment to the board of the annual license fee. The annual license fee shall be set by the board after it considers its cost of operation. The annual fee may be increased or decreased by the board but in no event shall the board set the annual fee at an amount which would not provide sufficient revenues to pay all the salaries, costs, and expenses incurred by the board in enforcing this chapter. The board may charge application processing fees, inactive license fees, and late fees. The inactive fees may be waived for building officials. The board may, upon request in writing, refund fees, except the application processing fee, paid by an applicant who is denied a license or who fails to complete the application process. No fees shall be refunded to a licensee as a result of a license revocation. The annual license fee shall be for a period of twelve months beginning January first of each year. All license fees collected by the board shall be paid into the State Treasury to the credit of the Home Builders Licensure Board Fund and its funds shall be subject to withdrawal only upon warrant of the state Comptroller to be issued upon certification of the secretary/treasurer of the board.
- (d) Any funds remaining in the State Treasury to the credit of the Home Builders Licensure Board Fund at the end of each year shall be paid into the General Fund of the state on or before

January 15, in each succeeding year, except that should the board exercise its authority to establish the Homeowner's Recovery Fund as provided in this chapter, any funds remaining in the State Treasury to the credit of the Home Builders Licensure Board Fund shall be paid into the Homeowner's Recovery Fund of the board. The board is authorized, at all times, to retain a sum not in excess of two hundred fifty thousand dollars (\$250,000) to meet any emergency that may arise which may affect its efficient operation.

(e) No funds shall be withdrawn or expended except as budgeted and allocated according to Sections 41-4-80 to 41-4-96, inclusive, and 41-19-1 to 41-19-12, inclusive, and only in amounts as stipulated in the general appropriations bill or other appropriations bills. (Acts 1992, No. 92-608, p. 1282, § 5; Acts 1997, No. 97-250, p. 457, § 3; Act 2002-72, p. 163,

(Acts 1992, No. 92-608, p. 1282, § 5; Acts 1997, No. 97-250, p. 457, § 3; Act 2002-72, p. 163, § 1.)

## § 34-14A-6. Exemptions. [AL ST SEC 34-14A-6]

Current through End of 2003 Organizational Session

This chapter does not apply to:

- (1) Any employee of a licensee who does not hold himself or herself out for hire or engage in contracting, except as such employee of a licensee.
- (2) An authorized employee of the United States, the State of Alabama, or any municipality, county, or other political subdivision, if the employee does not hold himself or herself out for hire or otherwise engage in contracting except in accordance with his or her employment.
- (3) General contractors holding a current and valid license, issued prior to January 1, 1992, under Sections 34-8-1 through 34-8-27.
- (4) Licensed real estate agents operating within the scope of their respective licenses on behalf of clients.
- (5) Owners of property when acting as their own contractor and providing all material supervision themselves, when building or improving one-family or two-family residences on such property for the occupancy or use of such owners and not offered for sale.

In any action brought under this chapter, proof of the sale or offering for sale of such structure by the owners of property, as provided in this subsection, within one year after completion of same is presumptive evidence that the construction was undertaken for the purpose of sale.

- (6) This chapter does not apply to mobile homes or to any structure that is installed, inspected, or regulated by the Alabama Manufactured Housing Commission or the repair, improvement, or reimprovement of any such structure, and shall not in any way change or interfere with the duties, responsibilities, and operations of the Alabama Manufactured Housing Commission as defined in Sections 24-4A-1 through 24-6-4.
- (7) The provisions of this chapter shall not apply in those counties having populations of less than 30,000 according to the most recent decennial census provided however the county commission of such counties may irrevocably elect to have their respective counties covered by the provisions of this chapter in the same fashion and under the same conditions as shall be applicable at the time of the election.

(Acts 1992, No. 92-608, p. 1282, § 6; Act 2002-72, § 1.)

§ 34-14A-7. Applications for the issuance or renewal of license; records; inactive license. [AL ST SEC 34-14A-7]

Current through End of 2003 Organizational Session

- (a) Any residential home builder who desires to receive a new or renewal license under this chapter shall make and file with the board 30 days prior to the next meeting of the board a written application on a form prescribed by the board. Such application shall be accompanied by the payment of the annual license fee required by the board. After the board accepts the application the applicant may be examined by the board at its next meeting. The board in examining the applicant shall consider the following qualifications of the applicant:
  - (1) Experience.
  - (2) Ability.
  - (3) Character.
  - (4) Business-related financial condition.
  - a. The board may require a financial statement on a form prescribed by the board and a public records search directly from a credit reporting agency.
  - b. The board may require a positive net worth or other evidence of business-related financial condition sufficient to reasonably satisfy the board of the applicant's financial responsibility.
  - c. The board may require that business-related judgments, judgment liens, and other perfected liens, must be satisfied and released.
  - d. Any information obtained by the board pursuant to this subsection relating to the financial condition of an applicant shall not be public information.
  - (5) Ability and willingness to serve the public and conserve the public health and safety.
  - (6) Any other pertinent information the board may require.

If the board finds the applicant qualified to engage in residential home building in Alabama, the applicant shall be issued a license. An applicant rejected by the board shall be given an opportunity to be reexamined after a new application has been filed and an additional application fee paid.

A record shall be made and preserved by the board of each examination and the findings of the board pertaining to the examination. A copy of the record shall be made available to any applicant requesting it upon the payment of a reasonable fee for same to the board.

- (b) Each licensee shall notify the board within 10 days after notice of the institution of any criminal prosecution against him or her, or of a civil complaint against him or her, if the subject matter of the civil complaint involves a residential home building transaction or involves the goodwill of an existing home building business or licensee. The notification shall be in writing, by certified mail, and shall include a copy of the complaint or, if a criminal charge, the specific charge made together with a copy of any indictment or information making the charges.
- (c) Each licensee shall notify the board in writing by certified mail within 10 days after he or she receives the notice that any criminal verdict has been rendered against him or her, or that a criminal action pending against him or her has been dismissed, or that a civil action in which he or she was a defendant and which involved a home building transaction or the goodwill of a home building business has resulted in a judgment or has been dismissed. The notification shall be in writing and shall include a copy of the court order or other document giving the licensee such notice.
  - (d)(1)a. Any licensee who desires to receive an inactive license shall make and file with the board a written application for an inactive license on a form prescribed by the board prior to the expiration of his or her current license. The application shall be accompanied by the payment of the annual inactive license fee required by the board. No act for which a license

is required may be performed under an inactive license. In the event a person holding a current inactive license applies for a license, he or she may rely upon his or her inactive license as evidence of the experience and ability requirements for licensure under subdivisions (1) and (2) of subsection (a).

- b. A person holding an expired license who seeks to reactivate his or her license within three years of the date of expiration shall be deemed to have satisfied the experience and ability requirements for licensure if application is made within the three-year time period and all other licensing requirements pursuant to subsection (a) have been met.
- (2) Any building official or building inspector who desires to receive an inactive license shall make and file with the board 30 days prior to the next meeting of the board a written application for an inactive license on a form prescribed by the board. After the board accepts the application, the applicant may be examined by the board at its next board meeting. The board, in examining the applicant, shall consider the following qualifications of the applicant as satisfying the experience and ability requirements for licensure:
  - a. That the building inspector is an employee of the United States, the State of Alabama, or any municipality, county, or other political subdivision and, by virtue of that employment, is exempted or prohibited by law from holding a license; and
    - b. That the building inspector either:
      - 1. Maintains current certification from the Southern Building Code Congress International as one of the following:
        - (i) Chief building official.
        - (ii) Deputy building official.
        - (iii) Building inspector.
        - (iv) Housing inspector.
        - (v) Design professional.
        - (vi) Plan reviewer.
      - 2. Possesses sufficient building qualifications and experience to receive a license, as demonstrated by satisfactory evidence presented to the board.
      - 3. In the event a building official or building inspector holding a current inactive license applies for a license, he or she may rely upon his or her inactive license as evidence of the experience and ability requirements for licensure under subdivisions (1) and (2) of subsection (a).

(Acts 1992, No. 92-608, p. 1282, § 7; Acts 1997, No. 97-250, p. 457, § 3; Act 2002-72, p. 63, § 1.)

# § 34-14A-8. Revocation, etc., of license; consumer complaint; hearing; appeal; reissuance; fines. [AL ST SEC 34-14A-8]

Current through End of 2003 Organizational Session

- (a) The board may revoke or suspend the license of any licensee who, in the opinion of the board, has committed fraud or deceit in obtaining a license required by this chapter or who has been guilty of gross negligence, incompetence, or misconduct in the practice of residential home building.
- (b) An original homeowner may file a consumer complaint alleging a violation of this section against any licensee hereunder. Consumer complaints shall be made in writing and sworn to by the person making the consumer complaint and shall be submitted to the executive director of the

board within six years of the date of substantial completion of construction or within six years of the date the original homeowner took possession of the residence.

- (c) An investigation may be initiated upon receipt of a consumer complaint or may be initiated by the board. The board may resolve violations by agreement between the board and the licensee with or without the filing of a formal administrative summons and complaint.
- (d) With the consent of the licensee, the board may conduct an informal hearing without meeting the requirements of the Administrative Procedure Act if no action is taken other than a reprimand, public or private.
- (e) The charges, unless dismissed without hearing by the board as unfounded or trivial, shall be heard within three months after the filing of an administrative summons and complaint by the board's executive director.
- (f) A copy of the charges, with notice of the time and place of the hearing, shall be served on the licensee charged at least fifteen days before the hearing date.
- (g) The licensee charged may appear personally and may be represented by counsel. He or she may cross-examine witnesses against him or her and may produce evidence and witnesses in his or her defense.
- (h) If, after hearing, the board votes to revoke the license of the licensee charged on the basis of fraud or deceit in obtaining his or her license or gross negligence, incompetence, or misconduct in residential home building activity, it shall order the license revoked.
- (i) After revocation, the licensee may within ten days file with the board written notice of his or her intention to appeal from the order of the board. Appeals from orders of the board shall be to the circuit court with jurisdiction of licensee's residence, or if the licensee is out of state, then to the Circuit Court of Montgomery County, for a determination by the court whether the decision of the board is supported by substantial evidence. If the court so finds it shall affirm the action of the board.
- (j) The board may issue a license to a licensee whose license has been revoked, and may reinstate a suspended license prior to the end of the suspension period, if four or more members of the board vote in favor of the issuance or reinstatement.
- (k) In addition to any other disciplinary action authorized pursuant to this chapter, the board may levy and collect administrative fines for violations of this chapter or the rules or regulations of the board in an amount not to exceed two thousand dollars (\$2,000) for each violation. (Acts 1992, No. 92-608, p. 1282, § 8; Acts 1997, No. 97-250, p. 457, § 3; Act 2002-72, p. 163, § 1.)

## § 34-14A-9. Roster of licensees. [AL ST SEC 34-14A-9]

Current through End of 2003 Organizational Session

A complete roster of licensees shall be prepared and published annually by the board. (Acts 1992, No. 92-608, p. 1282, § 9.)

## § 34-14A-10. Annual report of board. [AL ST SEC 34-14A-10]

Current through End of 2003 Organizational Session

The board shall annually submit to the Governor a report of its transactions for the preceding year. The board shall file with the Secretary of State a copy of the report submitted to the Governor.

(Acts 1992, No. 92-608, p. 1282, § 10.)

§ 34-14A-11. Promulgation of rules and regulations; mailings. [AL ST SEC 34-14A-11]

- (a) The board is authorized to promulgate rules and regulations necessary to effectuate the provisions of this chapter and accomplish its work. The rule-making powers of the board are subject to the Alabama Administrative Procedure Act as codified in Chapter 22 of Title 41.
- (b) For the purposes of this chapter, any notice, application, or other document required herein which is mailed certified mail return receipt requested, shall be deemed to have been filed as of the date it is postmarked. The provisions of this subsection shall be retroactively effective to all mailings relating to board business occurring on or after May 21, 1992. (Acts 1992, No. 92-608, p. 1282, § 11; Acts 1997, No. 97-250, p. 457, § 3.)

 $\S$  34-14A-12. Building laws and codes. [AL ST SEC 34-14A-12]

Current through End of 2003 Organizational Session

The county commissions of the several counties are authorized and empowered to adopt building laws and codes by ordinance which shall apply in the unincorporated areas of the county. The building laws and codes of the county commission shall not apply within any municipal police jurisdiction, in which that municipality is exercising its building laws or codes, without the express consent of the governing body of that municipality. The building laws and codes of the county commission may apply within the corporate limits of any municipality with the express consent of the governing body of the municipality. The county commission may employ building inspectors to see that its laws or codes are not violated and that the plans and specifications for buildings are not in conflict with the ordinances of the county and may exact fees to be paid by the owners of the property inspected. Utilizing the same authority and procedures as municipalities pursuant to Sections 11-53A-20 to 11-53A-26, inclusive, the county commission may condemn buildings, parts of buildings, or structures dangerous to the public and prohibit the use thereof and abate the same as a nuisance. The county commissions, municipalities, and other public entities are hereby authorized to enter into mutual agreements, compacts, and contracts for the administration and enforcement of their respective building laws and codes.

(Acts 1992, No. 92-608, p. 1282, § 12; Act 2002-72, p. 163, § 1.) **§ 34-14A-13. Issuance of permits. [AL ST SEC 34-14A-13]** *Current through End of 2003 Organizational Session* 

It is the duty of the building official, or other authority charged with the duty, of issuing building or similar permits, of any incorporated municipality or subdivision of the municipality or county, to refuse to issue a permit for any undertaking which would require a license hereunder unless the applicant has furnished evidence that he or she is either licensed as required by this chapter or is exempt from the requirements of this chapter. The building official, or other authority charged with the duty of issuing building or similar permits, shall report to the board the name and address of any person who, has violated this chapter. Nothing contained herein shall require a builder to pay license fees for subcontractors who will be or were involved in the construction for which the permit is being obtained as a condition of the issuance of a building permit or the issuance of a certificate of occupancy. The builder shall submit to the issuing municipality if requested a list of the subcontractors with correct physical address and phone numbers involved in the construction project within 15 days of the issuance of the building permit. Should the builder add any other subcontractor to the project, the builder will submit the

subcontractors name, address, and phone number to the municipality within three working days of hiring. An updated list of subcontractors shall be furnished by the builder before the issuance of a certificate of occupancy by the municipality.

(Acts 1992, No. 92-608, p. 1282, § 13; Acts 1997, No. 97-250, p. 457, § 3; Act 2000-99, p. 121, § 1.)

# § 34-14A-14. Penalties; injunctions. [AL ST SEC 34-14A-14]

Current through End of 2003 Organizational Session

Any person who undertakes or attempts to undertake the business of residential home building without holding a current and valid residential home builders license, issued by the Home Builders Licensure Board, as required by the provisions of this chapter or who knowingly presents to, or files false information with the board for the purpose of obtaining the license or who violates any law or code adopted by a county commission under this chapter shall be deemed guilty of a Class A misdemeanor.

Upon notice from the board, any person who undertakes or attempts to undertake the business of residential home building without holding a current and valid residential home builders license, as required by the provisions of this chapter, shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property, or to his or her agent, or to the residential home builder, or to the person doing the work, and shall state the conditions under which work may be resumed.

A residential home builder, who does not have the license required, may not bring or maintain any action to enforce the provisions of any contract for residential home building which he or she entered into in violation of this chapter.

Whenever it shall appear to the board that any residential home builder has violated or is about to violate this chapter, the board may in its own name petition the circuit court of the county where the violation occurred or is about to occur to issue a temporary restraining order or other appropriate injunctive relief enjoining the violation.

(Acts 1992, No. 92-608, p. 1282, § 14; Acts 1997, No. 97-250, p. 457, § 3; Act 2002-72, p. 163, § 1.)

#### § 34-14A-15. Recovery fund. [AL ST SEC 34-14A-15]

Current through End of 2003 Organizational Session

The board is authorized to establish a Homeowner's Recovery Fund from which an aggrieved homeowner may recover actual economic damages, not including interest and court costs, sustained within the State of Alabama as the direct result of conduct of a licensee in violation of this chapter or the rules and regulations of the board.

Any payments from the Homeowner's Recovery Fund shall be subject to the following limitations and conditions:

- (1) Payments for claims based on judgments or settlements against any one licensee shall not exceed fifty thousand dollars (\$50,000) in the aggregate.
- (2) Payments for claims arising out of the same transaction shall not exceed twenty thousand dollars (\$20,000) in the aggregate.
  - (3) The Homeowner's Recovery Fund shall make payments only to homeowners.
- (4) The Homeowner's Recovery Fund shall not make payments based on consent judgments.
  - (5) Failure of the homeowner to follow any provisions of this chapter shall preclude

payment from the Homeowner's Recovery Fund.

Each licensee shall, on order of the board, pay a fee not to exceed sixty dollars (\$60), no more than once a year, per licensee for deposit in the Homeowner's Recovery Fund. A licensee on inactive status shall not be required to contribute to the Homeowner's Recovery Fund. The annual Homeowner's Recovery Fund fee shall be set by the board after considering all expenses incurred by the board in defending, satisfying, or settling any claims paid from the Homeowner's Recovery Fund.

When a complaint is filed which may result in liability for the Homeowner's Recovery Fund, the complainant shall notify the board in writing, by certified mail, when the action is commenced.

When the notice is received, the board may enter an appearance, file pleadings and appear at court hearings, defend or take action it deems appropriate either on the behalf and in the name of the defendant or in its own name. The board may seek any appropriate method of judicial review. The board may settle or compromise the claim. Any expenses incurred by the board in defending, satisfying, or settling any claim shall be paid from the Homeowner's Recovery Fund.

When a complainant obtains a valid judgment, excluding consent judgments, in a court of competent jurisdiction against a licensee on the grounds set out above, the aggrieved homeowner may, when judgment is final, file a verified claim in the court in which the judgment was entered and, on 30 days' written notice to the board, may apply to the court for an order directing payment out of the Homeowner's Recovery Fund of the amount remaining unpaid on the judgment.

The court shall proceed on such application forthwith and, on hearing, the complainant shall be required to show that:

- (1) He or she is not the spouse, child, or parent of the debtor, or the personal representative of the spouse, child, or parent or a shareholder, officer, or director of the debtor.
- (2) He or she has obtained a judgment, as described in this section, stating the amount of the judgment and the amount owing on the judgment at the date of the application, and, that in such action, he or she had joined any and all bonding companies which issued corporate surety bonds to the judgment debtor as principal and all other necessary parties.
- (3) The following items, if recovered by him or her have been applied to the actual compensatory damages awarded by the court:
  - (a) Any amount recovered from the judgment debtor.
  - (b) Any amount recovered from bonding companies.
  - (c) Any amount recovered in out-of-court settlements.

The court shall order the Homeowner's Recovery Fund to pay the sum it finds due, subject to the provisions and limitations of this section.

Should the board pay from the Homeowner's Recovery Fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensee, all licenses of the licensee may be terminated by the board. The board may refuse to issue a new license to the former licensee until he or she has repaid in full, plus interest at the rate of 12 percent per annum, the amount paid from the Homeowner's Recovery Fund. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this section.

If the balance in the Homeowner's Recovery Fund is insufficient to satisfy a duly authorized claim or portion of a claim, the board shall, when sufficient money has been deposited in the Homeowner's Recovery Fund, satisfy the unpaid claims in the order that the claims were filed.

The sums received by the board, pursuant to the provisions of this section, shall be deposited into the State Treasury and held in a special fund to be known as the Homeowner's Recovery Fund, and shall be held by the board in trust for carrying out the purposes of the Homeowner's Recovery Fund. These sums may be invested by the State Treasurer in any investments which are legal under the laws of this state. Any interest or other income from investments of the Homeowner's Recovery Fund shall be deposited into the Homeowner's Recovery Fund.

When, on order of the court, the board has paid from the Homeowner's Recovery Fund any sum, the board shall be subrogated to all the rights of the judgment creditor, and all his or her rights, title, and interest in the judgment, to the extent of the amount paid from the Homeowner's Recovery Fund, shall thereby be assigned to the board. Any amount and interest recovered by the board on the judgment shall be deposited to the Homeowner's Recovery Fund.

The limitations and conditions of payment from the Homeowner's Recovery Fund as established by Act 2002-72 shall not apply in any case where, prior to May 1, 2002, a complainant has obtained a valid judgment in a court of competent jurisdiction against a licensee on the grounds set out in this chapter.

(Acts 1992, No. 92-608, p. 1282, § 15; Acts 1997, No. 97-250, p. 457, § 3; Act 2002-72, p. 163, § 1.)

# § 34-14A-16. Applicability to certain counties. [AL ST SEC 34-14A-16]

Current through End of 2003 Organizational Session

The provisions of this chapter shall not apply to any county the population of which is 30,000 or less according to the most recent federal decennial census, unless the county commission of the county irrevocably elects to have the county covered by this chapter.

(Acts 1992, No. 92-608, p. 1282, § 16; Act 2002-72, p. 163, § 1.)

# § 34-14A-17. Sunset provision. [AL ST SEC 34-14A-17]

Current through End of 2003 Organizational Session

The Home Builders Licensure Board shall be an enumerated board pursuant to Sections 41-20-1 through 41-20-16, and shall be reviewed at the same time as the State Board of Medical Examiners.

(Acts 1992, No. 92-608, p. 1282, § 17.)

# APPENDIX 3 - BOARD MEMBERS



400 SOUTH UNION STREET

SUITE 195

MONTGOMERY ALABAMA 36130-3605

> (334) 242-2230

FACSIMILE (334) 263-1397

WEBSITE www.hblb.state.al.us VIA FACSIMILE # 353-1331

January 15, 2004

Ms. Emily Christine Parish Examiners of Public Accounts 50 North Ripley Street, Room 3201 Montgomery, AL 36104-3833

RE: Sunset Audit of the Home Builders Licensure Board

Dear Ms. Parish:

The following is a list of the Home Builders Licensure Board members and official, as of January 2004, as requested in Item 1 of Attachment A of your letter dated January 7, 2004:

Jack B. Reid, Chairman Reid Construction 120 Rivermont Road Florence, Alabama 35634 Status: Current Governor's Appointee, Expires: 12/31/03

Jayne E. Ward, Sec./Treas. 8171 Bridgewater Trace Montgomery, Alabama 36117

Status: Current Governor's Appointee, Expires: 12/31/05

Jim Mitchell Mitchell Brothers Contractors, Inc. 960 Forestdale Boulevard Birmingham, Alabama 35214 Status: Current

Lt. Governor's Appointee, Expires: 12/31/04

Janice Warren, Vice Chairman Warren Construction 8523 U.S. Highway 431 Albertville, Alabama 35950 Status: Current Lt. Governor's Appointee, Expires: 12/31/05

Donald G. Nolan Nolan Construction 1110 Lee Road 244 Salem, Alabama 36874 Status: Current

Speaker of House Appointee,

Expires: 12/31/05

Victor E. Hanan 8637 Mill Chase Court Montgomery, Alabama 36117 Status: Current Speaker of House Appointee, Expires: 12/31/04

Ms. Emily Christine Parish January 15, 2004 Page Two

Hulan B. Smith City of Huntsville, Inspection Dept. Post Office Box 308 Huntsville, Alabama 35804 Status: Current Lt. Governor's Appointee,

Expires: 12/31/03

John C. Parker Parker Development Company 550 Clay Street Montgomery, Alabama 36101

Status: Current Governor's Appointee, Expires: 12/31/04

Sincerely,

J. R. CARDEN, JR. Executive Director

011404-1

John T. Manuel Manuel Construction 502 Bayshore Avenue Mobile, Alabama 36607 Status: Current Speaker of House Appointee,

Expires: 12/31/03

J. R. Carden, Jr., Executive Director 111 Asbury Drive Prattville, Alabama 36067

Status: Current No Expiration



May 25, 2004

400 SOUTH UNION STREET

Mr. John Norris

Director, Operations Division Gordon Persons Building 50 North Ripley Street

Montgomery, Alabama 36104-3833

MONTGOMERY ALABAMA 36132-3625

SUITE 195

Hon. Howard Sanderford, Chairman Joint Legislative Sunset Committee

Alabama State House

Respectfully Submitted.

Suite 528-B

(334)

Montgomery, Alabama 36130

Dear Mr. Norris and Chairman Sanderford:

FACSIMILE (334) 263-1397 Enclosed are the Home Builders Licensure Board's responses to significant items for the Quadrennial Sunset review of the Board's operations for the years 2000 - 2003. If you have any questions please call me at (334) 242-2230, or (800) 304-0853.

WEBSITE www.hblh.stare.olog-

Jack B. Reid Chairman

Home Builders Licensure Board

J.R. (Chip) Carden, Ju

**Executive Director** 

Home Builders Licensure Board



#### Item #1

#### **County Exemptions**

To date, the State of Alabama has seven counties that have no consumer protection other than the civil court system. Clay, Conecuh, Fayette, Lamar, Perry, Washington, and Winston counties remain exempt from the Board's jurisdiction. Consumers as well as contractors are at a distinct disadvantage in exempt counties. Consumers have no consumer complaint process to aid in the resolution of problems that arise out of the construction process. Quality unlicensed contractors in exempt counties are restricted due to the fact that the only place they can legally operate is in exempt counties. Lending institutions and state and federal agencies are also bypassing exempt counties because they have not chosen to provide any additional consumer protection offered by the Board.

**Recommended Action:** Eliminate the County exemption for the remaining seven exempt counties and open a one (1) year grandfathering provision for resident contractors or contractors that can prove they do business in an exempt county.

## **General Contractors Exemption**

A troublesome loophole has been created from this exemption. When the Home Builders License Law was passed in 1992 it exempted all licensed general contractors who were licensed prior to January 1,1992. Section 34-8-7 of the General Contractors License Law specifically exempts "the construction of any residence or private dwelling" from the regulation of the Alabama Licensing Board for General Contractors. If an exempt licensed general contractor builds a house for a consumer, then the contractor is neither under the jurisdiction of the Home Builders Licensure Board or the Alabama Licensing Board for General Contractors, leaving the consumer with a contractor that is not subject to any disciplinary or regulatory actions.

**Recommended Action:** Eliminate the exemption for licensed general contractors who were licensed prior to January 1, 1992. Open a one (1) year grandfathering provision specifically for these contractors who were licensed prior to January 1, 1992 or have a current license number of 18908 or lower.

## Unlicensed Builders Activity

The Home Builders Licensure Board needs clear cut authority to fine unlicensed contractors the same amount that it can fine a licensee or up to 25% of the illegally obtained contract. Currently the Board has the authority to fine a licensee up to \$2,000 for a violation of the statute or rules and regulations of the Board.

Recommended Action: Amend the Board's statute to incorporate the desired changes.

# Create Spending Authority for the Purpose of Building Purchase

The Home Builders Licensure Board has grown from 4500 licensees in 1998 to 7000 today and is showing signs of continued growth. As license numbers grow, so do the administrative duties that accompany the large volume of growth. The Board currently needs more space to accommodate the

current and coming changes. The Board pays rent that tends to increase with the expiration of each lease and each new lease proposal has rent escalation clauses attached. With the purchase of its own building the monthly facility costs would be fixed for the Board and in 10 to 15 years, the Board would own its own facility free and clear, freeing valuable resources to be used in other areas of consumer education and protection.

Recommended Action: Amend the Board's statute to incorporate the desired changes.

## Item #2

## Complainant Questionnaires

During the time period of this quadrennial sunset audit, the Board received 747 consumer complaints. The Department of Public Examiners did a sampling of 100 of these complaints and received fifty-seven (57) questionnaire responses. Thirty five (35) or 61% indicated they were dissatisfied with the Board and its handling of their consumer complaints. Of the 747 complaints received, 324 or 43.4% were closed without the need for disciplinary action, as the allegations did not rise to the level of a violation of the statute. One Hundred eighty two consumer complaints, or 24.3% were found to have probable cause for a disciplinary action. In each probable cause finding the case was settled prior to a disciplinary hearing or proceeded through the hearing process where the licensee was fined, suspended, or revoked. Ninety-five consumer complaints, or 13% were found to be against unlicensed builders and 91 consumer complaints, or 12% were found to be outside the Board's jurisdiction. Thirty consumer complaints, or 4% were withdrawn by the homeowner and 23 or 3%, remained open at the time of the audit. Two consumer complaints, or .3% were held in abeyance by the Board's investigative committee.

It is impossible to know, because of the Department Examiners questionnaire anonymity requirements, how many of the responding complainants had a probable cause finding or a no probable cause finding. The Board feels that this information is vital to the statistical accuracy of the statement in significant item #2. A sample should be drawn from each category of consumer complaints and send those complainants the same questionnaire and then compare the results. Without this information, it will be impossible to get an accurate representation of the Board's handling of consumer complaints.

Every consumer complaint does not result in a disciplinary action against the licensee. In the event the Board does fine, suspend, or revoke the licensee, the consumer is often unsatisfied with the Board's ruling.

Recommended Action: The Home Builders Licensure Board will take action to better educate consumers on the complaint process, the disciplinary process and better define exactly what constitutes a violation of the chapter. The Home Builders Licensure Board requests the Department of Public Examiners take samples from each category of consumer complaint, and then compare the results. By comparing the questionnaire results from each complaint category a more accurate conclusion can be formed about the Board's performance regarding consumer complaints.